

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 722 OF 2005

Balasaheb Devappa Chougule & ors. ... Appellants

V/s

Hari Krishna Powar & ors. ... Respondents

Mr. T.S. Ingale for the appellants.

Mr. S.S. Shah for the Respondent Nos. 1 & 2.

CORAM: P.V. KAKADE, J.
DATED: 9TH AUGUST, 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Ad-hoc Addl. District Judge, Kolhapur dated 10.2.2005 partly allowing the appeal and setting aside the judgment and decree passed by the Civil Judge, Jr.Divn., Ichalkaranji in R.C.S. No. 128 of 1995 dated 30.9.2003.

2. The plaintiffs filed the suit for permanent and mandatory injunctions against the defendants alleging that the suit property being Gat No.658 admeasuring 26 Ares belonging to the plaintiffs was their ancestral property and the defendants were trying to create new

way through the suit Gat No.658 from northern side by making encroachment. According to them, there is no way in existence passing through Gat No.658 on northern side, but defendants forcibly started to create new way adjacent to northern side boundary of suit Gat No.658 without any right or interest and hence the suit.

3. Defendants contested the suit contending that the way existed on the northern boundary of Gat No.658 which could be seen from the revenue records and, therefore, it was submitted that there was no question of encroachment in the land of the plaintiffs' and, as such, the suit was sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the defendants had proved that there was foot way and it was used by the land holders was in existence since long. In fact the Issue No.5 framed by the Trial Court, was raised to the effect that, whether defendants prove that there was way having 8 feet width east-west in length in the suit property since long and all agriculturists were using the said way and, as such, the suit came to be dismissed.

5. The appeal was carried to the District Court, Kolhapur. The learned Addl. District Judge, after hearing both parties, came to the conclusion that the findings recorded by the Trial Court were incorrect and appeal came to be partly allowed and perpetual injunction was granted restraining the defendants from causing obstruction to the possession of the plaintiffs over the suit field and creating a new road by encroaching in the suit field. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. Both the Courts below have relied upon the documents of revenue records in order to come to the conclusion as noted above. The learned counsel for the appellants submitted that the lower appellate Court had erred in appreciating the entire evidence on record because inspite of voluminous documentary evidence, it was held that there existed no way on the nothern side of Gat No.658. However, in this regard, it must be noted that, even the Trial Court had come to the conclusion that there was only foot way in existence which aspect was also negated by the lower appellate Court on the basis of available evidence. In this

connection, it must be noted that the original ancient record did show only a foot way on the northern boundary of the plaintiffs' land but after the Consolidation Scheme was brought into effect, the suit way was not shown in the revenue records, which were relied upon by the lower appellate Court. The Court Commissioner appointed pending the dispute also recorded the finding to the effect that no way existed at the said place. Under the circumstances, it cannot be said that the lower appellate Court has erred in holding that there was no way as alleged by the defendants. Even the lower appellate Court, in para 19 of its judgment, has observed that, though the map Exh.77 showed that there was foot way through old Gat No.212, that does not mean that the road of 8 ft. width passed through the said foot way.

In this factual matrix, I am inclined to accept the reasoning adopted by the lower appellate Court Judge while allowing the appeal in part and issuing the order of the perpetual injunction.

7. In the result, the evidence on record appears to be properly appreciated and, therefore, it would brook no interference. Hence, the appeal stands dismissed with

no order as to costs. Consequently, Civil Application No. 1233 of 2005 also stands dismissed with no order as to costs.

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